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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 24th September, 1965:—

BILL No. XIV OF 1965

A bill further to amend the Advocates Act, 1961.

BE it enacted by Parliament in the Sixteenth Year of the Republic of India as follows:—

Short title and commencement.

1. This Act may be called the Advocates (Amendment) Act, 1965.

Amendment of section 1.

25 of 1961.

2. In section 1 of the Advocates Act, 1961 (hereinafter referred to as the principal Act),—

(*i*) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) It extends to the whole of India.";

(*ii*) in sub-section (3), for the words "shall come into force", the words, brackets and figure "shall, in relation to the

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territories other than those referred to in sub-section (*4*), come into force" shall be substituted;

(*iii*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) This Act shall, in relation to the State of Jammu and Kashmir and the Union territory of Goa, Daman and Diu and the Union territory of Pondicherry, come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for the said State and the different Union territories and for different provisions of this Act.".

Amendment of section 3.

3. In section 3 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) in clause (*a*), for the words "Madhya Pradesh, Madras", the words "Jammu and Kashmir, Madhya Pradesh" shall be substituted;

(*ii*) for clause (*cc*), the following clauses shall be substituted, namely:—

"(*cc*) for the State of Madras and the Union territory of Pondicherry to be known as the Bar Council of Madras;

(*ccc*) for the State of Maharashtra and the Union territories of Dadra and Nagar Haveli and Goa, Daman and Diu, to be known as the Bar Council of Maharashtra;";

(*b*) in sub-section (*2*), in clause (*b*),—

(*i*) after the words "the Bar Council of Assam", the words "the Bar Council of Jammu and Kashmir," shall be inserted;

(*ii*) the words "in accordance with the system of proportional representation by means of the single transferable vote" shall be omitted.

Amendment of section 8.

4. Section 8 of the principal Act shall be renumbered as sub-section (*1*) thereof, and,—

(*a*) in sub-section (*1*) as so re-numbered, for the words "one-third" and "every second year", the words "one-half" and "every third year" shall be, and shall be deemed always to have been, respectively substituted; and

(*b*) after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) Where, in the case of any State Bar Council, an election has been held, before the commencement of the Advocates (Amendment) Act, 1965, on the expiration of the second year to fill the vacancies caused by the retirement of one-third of its members first elected thereto, then, notwithstanding anything contained in sub-section (*1*), as nearly as possible one-sixth of the members first elected to that Council shall retire on the expiration of the third year in the prescribed manner and the vacancies so caused shall be filled by the election of new members in the prescribed manner and thereafter, the provisions of sub-section (*1*) shall apply in relation to that Bar Council as they apply in relation to any other Bar Council.".

Amendment of section 16.

5. In section 16 of the principal Act, in sub-section (*2*), for the words "experience and standing at the Bar", the words "standing at the Bar or special knowledge or experience in law" shall be substituted.

Amendment of section 24.

6. In section 24 of the principal Act, in clause (*a*) of sub-section (*3*), the words, figures and letters "before the 31st day of March, 1964" and "then in force" shall be omitted.

Amendment of section 42.

7. In section 42 of the principal Act, after sub-section (*3*) the following sub-section shall be inserted, namely:—

"(*4*) Notwithstanding the absence of the Chairman or any member of a disciplinary committee on a date fixed for the hearing of a case before it, the disciplinary committee may, if it so thinks fit, hold or continue the proceedings on the date so fixed and no order made by the disciplinary committee in any such proceeding shall be invalid merely by reason of the absence of the Chairman or member thereof on any such date.".

Substitution of section 44.

8. For section 44 of the principal Act, the following section shall be substituted, namely:—

Review and reconsideration of orders by disciplinary committee.

"44. (*1*) The disciplinary committee of a Bar Council may, of its own motion or otherwise,—

(*i*) review or reconsider any order passed by it under this Chapter, or

(*ii*) reconsider any order passed, before the commencement of this Chapter, by any court or authority in relation to disciplinary proceeding against a person who is enrolled

as an advocate under this Act, or who was an advocate under the Indian Bar Councils Act, 1926, and pass such order as it may deem fit and any such order may include a direction for the reinstatement of such person as an advocate: 38 of 1926.

Provided that no order which prejudicially affects any person shall be passed under this section without giving him an opportunity of being heard.

(2) No order passed by a State Bar Council under sub-section (1) shall have effect unless it has been approved by the Bar Council of India.".

Insertion of new section 46A.

9. After section 46 of the principal Act, the following section shall be inserted namely:—

Financial assistance to State Bar Council.

"46A. The Bar Council of India may, if it is satisfied that any State Bar Council is in need of funds for the purpose of performing its functions under this Act, give such financial assistance as it deems fit to that Bar Council by way of grant or otherwise.".

Insertion of new sections 58AA, 58AB and 58AC.

10. After section 58A of the principal Act, the following sections shall be inserted, namely:—

Special provision with respect to certain persons migrating to India.

"58AA. Notwithstanding the repeal by this Act of the provisions of the Legal Practitioners Act, 1879 or of any other law relating to the admission and enrolment of legal practitioners (hereafter in this section referred to as such Act or law), every person who migrates to the territory of India from any area which, before the 15th day of August, 1947 was comprised within India as defined in the Government of India Act, 1935 and who has, before such migration, been a pleader, mukhtar or revenue agent in any such area under any law in force therein, may be admitted and enrolled under the relevant provisions of such Act or law as a pleader, mukhtar or, as the case may be, revenue agent if he— 18 of 1879.

(*a*) makes an application for the purpose to the appropriate authority under such Act or law; and

(*b*) is a citizen of India and fulfils other conditions, if any, specified in this behalf by the appropriate authority aforesaid;

and notwithstanding the repeal by this Act of the relevant provisions of such Act or law, every pleader, mukhtar or revenue agent so enrolled shall have the same rights as respects practice in any court or revenue office or before any other authority or person and be subject to the disciplinary jurisdiction of the same authority to which he would be subject under the relevant provisions of such Act or law as if they had not been repealed and accordingly, those provisions shall have effect in relation to such persons.

Special provisions in relation to certain Union-territories.

58AB. (*1*) Notwithstanding anything contained in this Act, all persons who, immediately before the date on which the provisions of Chapter III are brought into force in any Union territory referred to in sub-section (4) of section 1, were entitled to practise the profession of law (whether by way of pleading or acting or both) under any law in force in such Union territory or who would have been so entitled had they not been in public service on the said date, shall, for the purposes of clause (*a*) of sub-section (*1*) of section 17, be deemed to be persons who were entered as advocates on the roll of a High Court under the Indian Bar Councils Act, 1926, and every such person may, on an application made in this behalf within such time as may be specified by the concerned State Bar Council, be admitted as an advocate on the State roll maintained in respect of that Union territory:

38 of 1926.

Provided that the provisions of this sub-section shall not apply to any person, in the Union territory of Goa, Daman and Diu, who is not a citizen of India on the date of the application aforesaid.

(*2*) Notwithstanding anything contained in this Act, every person who, immediately before the date on which the provisions of Chapter IV are brought into force in any Union territory referred to in sub-section (4) of section 1, was practising the profession of law (whether by way of pleading or acting or both or in any other way) by virtue of the provisions of any law in force in such Union territory, who does not elect to be or is not qualified to be, enrolled as an advocate under sub-section (*1*), shall, notwithstanding the repeal by this Act of the relevant provisions of such law, continue to enjoy the same rights as respects practice in any court or revenue office or before any authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed, or, as the case may be, to which he was subject, immediately before the said date and accordingly the relevant provisions of the law

aforesaid shall have effect in relation to such person as if they had not been repealed.

(3) On the date on which this Act or any part thereof comes into force in any Union territory referred to in sub-section (4) of section 1, the law in force in that Union territory which corresponds to this Act or such part and which does not stand repealed by virtue of the provisions of section 50 of this Act, shall also stand repealed.

Special provisions in relation to Jammu and Kashmir.

58AD. (1) Notwithstanding anything contained in this Act, all advocates who, immediately before the date on which the provisions of Chapter III are brought into force in the State of Jammu and Kashmir, were entitled to practise in the High Court of that State or who would have been so entitled had they not been in public service on the said date shall, for the purpose of clause (a) of sub-section (1) of section 17, be deemed to be persons who were entered as advocates on the roll of a High Court under the Indian Bar Councils Act, 1926, and every such person may, on any application made in this behalf within such time as may be specified by the Bar Council of India, be admitted as an advocate on the State roll maintained in respect of the said State. 38 of 1926.

(2) Notwithstanding anything contained in this Act, every person who, immediately before the date on which the provisions of Chapter III are brought into force in the State of Jammu and Kashmir, was entitled otherwise than as an advocate to practise the profession of law (whether by way of pleading or acting or both) by virtue of the provisions of any law in force in the said State, or who would have been so entitled had he not been in public service on the said date, may be admitted as an advocate on the State roll maintained in respect of the said State, if he—

(i) makes an application for such enrolment in accordance with the provisions of this Act; and

(ii) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1) of section 24.

(3) Notwithstanding anything contained in this Act, every person who, immediately before the date on which the provisions of Chapter IV are brought into force in the State of Jammu and Kashmir, was practising the profession of law (whether by way of pleading or acting or both or in any other way) by virtue of the provisions of any law in force therein, who does not elect to be or is not qualified to be enrolled as an advocate under sub-section (1) or sub-section (2) shall, notwithstanding the repeal by this Act of the relevant provisions of such law, continue to

enjoy the same rights as respects practice in any court or revenue office or before any authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed, or as the case may be, to which he was subject, immediately before the said date and accordingly the relevant provisions of the law aforesaid shall have effect in relation to such person as if they had not been repealed.

(4) On the date on which this Act or any part thereof comes into force in the State of Jammu and Kashmir, the law in force in that State which corresponds to this Act or such part thereof which does not stand repealed by virtue of the provisions of section 50 of this Act shall also stand repealed.".

STATEMENT OF OBJECTS AND REASONS

The Advocates Act enacted in May 1961 provides for a unified all-India Bar with one class of legal practitioners, namely, advocates who would be entitled to practise in all the courts in India including the Supreme Court. At present this Act extends to the whole of India except the State of Jammu and Kashmir, the Union territory of Goa, Daman and Diu and the Union territory of Pondicherry. The object underlying the Act cannot be fully achieved unless it extends to those areas also. It is therefore proposed to extend the Act to the whole of India including the aforesaid areas. The Government of Jammu and Kashmir and the Administration of the said Union territories were consulted in regard to this matter and they have agreed to the proposal. It is proposed that the State of Jammu and Kashmir will have a separate Bar Council consisting of fifteen members, while the Union territory of Pondicherry and the Union territory of Goa, Daman and Diu will have common Bar Councils with that of Madras and Maharashtra respectively. The legal practitioners practising in those areas have been given the right to get themselves enrolled as advocates under the Act. If, however, some of the legal practitioners do not get themselves so enrolled as advocates, their existing rights will be preserved.

2. Under the existing Act, the term of office of elected members of a State Bar Council is six years with one-third of them retiring every second year and the election is held in accordance with the system of proportional representation by means of the single transferable vote. In order to avoid frequent elections involving heavy expenses and for convenience, it is now proposed that election would be held every third year with one-half of the members retiring, and the system of direct election by a simple majority would be adopted.

3. Certain legal practitioners have, on account of disturbances, migrated from Pakistan to India and it is proposed to enable them to carry on their practice of law in India. As some of the State Bar Councils are finding it difficult to carry on their functions with the limited resources at their disposal, the Bar Council of India is being empowered to give financial assistance to any State Bar Council.

4. The working of the Act has revealed certain other difficulties also and opportunity is being taken to remove them by making suitable amendments which are of a minor character.

5. The Bill seeks to achieve the above objects and the notes on clauses appended to the Bill explain the provisions thereof.

NEW DELHI;
The 21st September, 1965.

A. K. SEN.

Notes on clauses

Clause 2.—This clause seeks to extend the Advocates Act to the State of Jammu and Kashmir and to the Union territories of Goa, Daman and Diu and of Pondicherry. The date of commencement of the Act in the said State and the Union territories will be such as may be determined by the Central Government by notification and different dates may be chosen in respect of different areas and for different provisions of this Act. Section 1 has been suitably amended for the purpose.

Clause 3.—Section 3 deals with the constitution of the State Bar Councils. It is proposed to have a separate Bar Council consisting of fifteen members for the State of Jammu and Kashmir while the Union territory of Pondicherry and the Union territory of Goa, Daman and Diu will have common Bar Councils with that of Madras and Maharashtra respectively.

Section 3(2) (b) provides that the election of the members of the State Bar Councils shall be in accordance with the system of proportional representation by means of the single transferable vote. On the suggestion of the Bar Council of India, it is proposed to substitute this system by the system of direct election by a simple majority as was the case under section 5 of the Indian Bar Councils Act, 1926. This clause seeks to amend section 3 for the purposes aforesaid.

Clause 4.—Under section 8 of the Act, the term of office on the elected members of the State Bar Council is six years with one-third of the members retiring on the expiration of every second year. The Bar Council of India has represented that elections to the State Bar Councils involve considerable expenditure and that it may be held every third year instead of every second year with one-half of the members retiring. This clause seeks to amend section 8 to achieve the purpose.

Proposed sub-section (2) is consequential in nature and is intended to bring the cases wherein election of one-third of the members has already been held before enforcement of this amending Act, within the purview of the modified provision.

Clause 5.—This clause seeks to amend section 16 of the Act with a view to making it clear that any special knowledge or experience

in law will also be taken into account in designating an advocate as senior advocate.

Clause 6.—Section 24 enumerates the persons who may be admitted as advocates and the conditions they should satisfy. In sub-section (3) of that section, which was introduced by Act 21 of 1964, it is provided that a vakil, pleader or mukhtar who has put in three years as such before the 31st March, 1964, may be admitted as an advocate. It now appears that certain Mukhtars and pleaders could not get themselves enrolled in time or have not been able to complete three years of practice before the specified date. This is a very small category of persons and it is considered desirable that they should be made eligible to get themselves enrolled as advocates. This clause seeks to amend sub-section (3) of section 24 to achieve the purpose.

Clause 7.—The Bar Council of India has represented that it has become difficult to effect speedy disposal of the proceedings before the disciplinary committee due to the absence of one member or other at a hearing. It has been suggested that a suitable provision may be made enabling the disciplinary committee to proceed with the hearing of a case even in the absence of any member thereof. This clause seeks to amend section 42 for the purpose.

Clause 8.—Section 44 provides for review by the disciplinary committee of orders passed by it. It has now been represented that the Bar Councils should have also the power to re-consider any order passed by it. Prior to the commencement of Chapter V of the Act, orders have been passed by the appropriate authorities under the Indian Bar Councils Act, 1926. The Bar Council of India has suggested that they should also have the power to re-consider such orders as well. This clause seeks to modify section 44 for the purpose. It is also being provided that any order passed under the new section shall not have effect unless it is approved by the Bar Council of India.

Clause 9.—Certain State Bar Councils have complained that they do not have adequate funds to carry on their functions under the Act. It is, therefore, considered necessary to have a provision enabling the Bar Council of India to give financial assistance to any needy State Bar Council by way of grant or otherwise. This clause seeks to insert new section 46A for the purpose.

Clause 10.—Certain legal practitioners (pleaders, mukhtars and revenue agents) who, on account of disturbances, have migrated from Pakistan to India are unable to carry on their profession of

law in India for want of necessary legal provision in this behalf. It is considered necessary to preserve for them the rights to get enrolled as pleader, mukhtar, revenue agent, as the case may be, under the Legal Practitioners Act, 1879 or other law relating to admission and enrolment of legal practitioners, notwithstanding the repeal of the same by the Advocates Act. New section 58AA inserted by this clause is intended to achieve the purpose.

With the extension of the Advocates Act to the State of Jammu and Kashmir and the Union territory of Pondicherry and the Union territory of Goa, Daman and Diu, the legal practitioners there have to be given the right to get themselves enrolled as advocates subject to their satisfying certain conditions. The rights of those legal practitioners who do not elect to be enrolled as advocates have also to be preserved. New sections 58AB and 58AC inserted by this clause are intended to achieve the purpose.

B. N. BANERJEE,
Secretary.

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